



U.S. Department of Justice

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(Red)

JCC:MDM
90-11-2-298

Washington, DC, 20530

99519

May 3, 1991

FEDERAL EXPRESS

Richard Kirk
Morris, James, Hitchens & Williams
222 Delaware Avenue
P.O. Box 2306
Wilmington, Delaware 19899

Re: U.S. v. Hercules, et al., C.A. No. 89-562-LON
Delaware Sand and Gravel Superfund Site

Dear Dick:

Thank you for your letters of May 3, 1991. As you requested, I have enclosed a revised consent decree for signature by the proposed settling defendants. It is our understanding that if defendant American National Can Company decides to join the proposed settlement on or before May 24, 1991, that the decree will provide for the payment of \$1,475,000 to the United States.

Please call if you have any questions or comments.
Thank you.

Very truly yours,

Assistant Attorney General
Environment and Natural Resources
Division

Michael D. McIntyre, Attorney
Environmental Enforcement Section

cc: Catherine M. Rojko
Maria Parisi Vickers
Patricia C. Hannigan
Sarah L. Caspar
Eric Newman

AR200227

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERCULES INCORPORATED,
ALLIED-SIGNAL INC.,
AMERICAN NATIONAL CAN COMPANY,
AMERICAN CYANAMID COMPANY,
AMOCO CHEMICAL CORPORATION,
AVON PRODUCTS, INC.,
CHAMPLAIN CABLE CORPORATION,
CHRYSLER CORPORATION,
CONGOLEUM CORPORATION,
E.I. DU PONT DE NEMOURS & CO., INC.,
GENERAL MOTORS CORPORATION,
ICI AMERICAS, INC.,
JOHNSON CONTROLS, INC.,
MOTOR WHEEL CORPORATION,
OCCIDENTAL CHEMICAL CORPORATION,
SCA SERVICES, INC.,
STANDARD CHLORINE OF DELAWARE, INC.,
WASTE MANAGEMENT OF DELAWARE, INC.,
and WITCO CORPORATION,

Defendants.

C.A. No. 89-562-LON

CONSENT DECREE

AR200228

I. INTRODUCTION

1. On December 28, 1990, the United States of America (the "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed an amended complaint against the above-named defendants under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended, for reimbursement of Past Removal Costs, as defined in Section VI.A and B, herein, incurred by the United States in responding to the release or threatened release of hazardous substances at the Delaware Sand & Gravel Superfund Site in New Castle County, Delaware (the "Site"). The amended complaint also seeks a declaratory judgment on liability for other response costs or damages that will be binding on any subsequent action or actions to recover such further response costs or damages under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

2. Defendants Hercules Incorporated, Allied-Signal, Inc., American Cyanamid Company, Amoco Chemical Corporation, Champlain Cable Corporation, Chrysler Corporation, Congoleum Corporation, E.I. du Pont de Nemours & Co., Inc., General Motors Corporation, ICI Americas, Inc., Johnson Controls, Inc., Motor Wheel Corporation, Occidental Chemical Corporation, SCA Services, Inc. ("SCA"), Standard Chlorine of Delaware, Inc., Waste Management of Delaware, Inc. ("WMDI"), and Witco Corporation ("Settling Defendants") and the United States wish to resolve the United States' claims for Past Removal Costs, as defined in

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Section VI.A and B, herein, against the Settling Defendants without further litigation, and without affecting or impairing any claims of the parties against any person or entity other than as explicitly stated herein.

3. The Settling Defendants and the United States agree that this settlement, is fair, reasonable, in the public interest, made in good faith and at arms length, and that entry of this Consent Decree is the most appropriate means to resolve the United States' claims.

NOW THEREFORE, before the taking of any testimony, without adjudication of the merits of the United States' claims alleged in the amended complaint, without admission with regard to liability by any party, and with the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b). The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

B. Venue is proper in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b).

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III. APPLICABILITY

This Consent Decree shall be binding upon the United States and the Settling Defendants, their successors, and assigns.

IV. AUTHORIZATION

The undersigned representative of each Settling Defendant certifies that he or she is authorized by the Settling Defendant(s) for whom he or she is signing to enter into this Consent Decree and to execute and legally bind the Settling Defendant to the terms and conditions of this Consent Decree.

V. VOIDABILITY

If for any reason the Court should decline to approve this Consent Decree, this Consent Decree shall be void and the terms hereof cannot be used as evidence in any litigation.

VI. PAST REMOVAL COSTS

A. "Past Removal Costs" include all costs incurred by the United States from November 1, 1979 through April 22, 1988 to conduct inspections, monitoring, evaluations, assessments, sampling, analysis, immediate removal response actions, the Remedial Investigation and Feasibility Study ("RI/FS") of the Site, and issue the Record of Decision ("ROD") dated April 22, 1988 concerning the Site, totalling \$2,160,139.36, plus costs of enforcement incurred in collecting those costs and statutory interest accrued upon said Past Removal Costs.

B. The Past Removal Costs do not include any response costs incurred in connection with any federal activity at the

Site except as expressly provided in paragraph VI.A, supra. For example, Past Removal Costs do not include the costs of the design, development or oversight of any phases of any other removal action(s), or any remedial action taken at the Site.

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VII. REIMBURSEMENT OF PAST REMOVAL COSTS

A. Within thirty (30) days of the entry of this Consent Decree by the Court, the Settling Defendants, jointly and severally, shall pay the sum of ONE MILLION THREE HUNDRED FIFTY FIVE THOUSAND DOLLARS (\$1,355,000.00) to the United States by certified or cashier's check, payable to "EPA - Hazardous Substances Superfund," which check shall reference the Delaware Sand & Gravel Site by name, and shall be delivered to:

E.P.A. Region 3
Attention: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA. 15251

B. A copy of the certified or cashier's check and any transmittal letters shall be sent simultaneously to the Regional Hearing Clerk, 3RC00, EPA Region III, 841 Chestnut Building, Philadelphia, PA. 19107, and to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

C. Any payments not paid when due shall accrue interest at the rate of ten percent (10%) per annum, calculated from the date of entry of this Consent Decree.

VIII. RESERVATION OF RIGHTS

A. Except as provided in Section IX, infra, the United States expressly reserves all its rights under federal law, including its right to take action against the Settling Defendants or against any other alleged responsible party to obtain injunctive relief at the Site or to recover any and all costs of response as "response" is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), (except Past Removal Costs as defined in Section VI.A and B herein), incurred or to be incurred by the United States at the Site. The Settling Defendants expressly reserve all rights and defenses with respect to such claims, except as provided in paragraph VIII.B, infra.

B. In any subsequent action by the United States for injunctive relief or for the recovery of response costs, other than Past Removal Costs as defined herein, incurred by the United States at the Site, the Settling Defendants shall not assert any defense of claim-splitting, collateral estoppel, and res judicata based upon the filing or dismissal of this action for Past Removal Costs, or entry of this Consent Decree. The United States reserves all claims for costs incurred by the United States (other than Past Removal Costs as defined herein) against the Settling Defendants.

IX. COVENANT NOT TO SUE

A. In consideration for the payment to be made by the Settling Defendants as provided in Section VII, supra, and effective upon receipt of such payment, the United States

covenants not to sue, execute judgment or take any other civil judicial or administrative action against the Settling Defendants for recovery of the Past Removal Costs.

B. In consideration of the covenants made in this Consent Decree, the Settling Defendants will not make any claims or demands for the Past Removal Costs as defined herein against the United States either in its own name or as trustee of the Hazardous Substance Superfund established by Section 221 of CERCLA, 42 U.S.C. § 9631, including any claims pursuant to Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612, or make any claims for indemnification or contribution by the United States of the amount paid pursuant to Section VII.A, supra.

C. Nothing in this Consent Decree shall be construed as an allocation or apportionment of the liability of the Settling Defendants or of any person not party to this Consent Decree, for any response costs incurred by the United States in connection with the Site, or for injunctive relief at the Site.

D. This covenant not to sue does not cover: 1.) claims based upon a failure by the Settling Defendants to comply with the terms of this Consent Decree; 2.) any claim for recovery of response costs not listed in Section VI of this Consent Decree; 3.) criminal claims; 4.) claims for damages to natural resources at the Site; and 5.) claims based on liability for hazardous substances removed from the Site.

X. CONTRIBUTION ACTIONS BY OTHER PARTIES

Payment by the Settling Defendants pursuant to Section VII of this Consent Decree resolves the Settling Defendants' alleged liability to the United States, within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for the Past Removal Costs as defined in Section VI of this Consent Decree. The Settling Defendants are entitled, therefore, to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

XI. STATEMENT REGARDING LIABILITY

This Consent Decree was negotiated and executed by the United States and the Settling Defendants in good faith to avoid potentially expensive and protracted litigation. The execution of this Consent Decree is not and shall not be considered an admission of liability or fault of any kind, nor is it an admission of the factual allegations set forth in the amended complaint. Neither this Consent Decree nor any of its terms or provisions shall constitute any evidence against, admission by, or estoppel against the Settling Defendants, except as provided by Section VIII.B, supra, or the United States with respect to any claim or cause of action arising from the contamination at the Delaware Sand & Gravel Site, except as may be necessary for the Settling Defendants to obtain the contribution protection granted in Section X, supra, and except in any proceedings by the United States to enforce the terms of this Consent Decree.

XII. RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the United States' response authority under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.

XIII. RETENTION OF JURISDICTION AND TERMINATION

Upon delivery to the United States of the sums provided for in Section VII of this Consent Decree, this action by the United States under Section 107 of CERCLA, 42 U.S.C. § 9607 against the Settling Defendants for the Past Removal Costs shall be dismissed with prejudice. Following such dismissal, the Court shall retain jurisdiction of the United States' request for declaratory relief against all defendants under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and any cross-claims and third-party claims.

XIV. COSTS OF SUIT AND ENFORCEMENT

The Settling Defendants shall bear their own costs and attorneys' fees incurred in this action through the date of entry of this Consent Decree. Each party to this Consent Decree expressly reserves its right to collect its unreimbursed costs and attorneys' fees under CERCLA from any other non-settling responsible party as more fully set forth in Section VIII of this Consent Decree.

XVI. PUBLIC COMMENT

The parties agree and acknowledge that final approval and entry of this proposed Consent Decree is subject to the requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

ORIGINAL
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DATE

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

DATE

MICHAEL D. MCINTYRE, Attorney
Environmental Enforcement Section
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044
(202) 514-5471

WILLIAM C. CARPENTER, JR.
United States Attorney
District of Delaware

DATE

PATRICIA C. HANNIGAN
Assistant United States Attorney
J. Caleb Boggs Federal Building
844 King Street, Room 5110
Wilmington, Delaware 19801
(302) 573-6277

DATE

EDWIN B. ERICKSON
Regional Administrator
U.S. Environmental Protection
Agency - Region III
841 Chestnut Building
Philadelphia, PA 19107

DATE

MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection
Agency - Region III
841 Chestnut Building
Philadelphia, PA 19107

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(Red)

DATE

MARIA PARISI VICKERS
Assistant Regional Counsel
U.S. Environmental Protection
Agency - Region III
841 Chestnut Building
Philadelphia, PA. 19107
(215) 597-9387

FOR THE SETTLING DEFENDANTS:

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United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Date

Hercules Incorporated

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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Date

Allied-Signal, Inc.

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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Date

American Cyanamid Company

By: _____
(Signature)

(Name and title)

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United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Date

Amoco Chemical Corporation

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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(Red)

Date

Champlain Cable Corporation

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Original
(Red)

Date

Chrysler Corporation

By: _____
(Signature)

(Name and title)

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United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Date

Congoleum Corporation

By: _____

(Signature)

(Name and title)

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United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Date

E.I. duPont de Nemours & Co., Inc.

By: _____

(Signature)

(Please type name and title here)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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(Red)

Date

General Motors Corporation

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

ORIGINAL
(Red)

Date

ICI Americas, Inc.
Company Name

By: _____
(Signature)

(Name and title)

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United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Date

Johnson Controls, Inc.

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

ORIGINAL
(Red)

Date

Goodyear Tire and Rubber Company/
Motor Wheel Corporation

By: _____
(Signature)

(Name and title)

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(Red)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

Date

Occidental Chemical Corporation

By: _____
(Signature)

(Name and title)

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United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court .
District of Delaware

Date

SCA Services, Inc.

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

(Red)

Date

Standard Chlorine of Delaware, Inc.

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

ORIGINAL
(Red)

Date

Waste Management of Delaware, Inc.

By: _____
(Signature)

(Name and title)

United States v. Hercules Incorporated, et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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(Red)

Date

Witco Corporation
Company Name

By: _____
(Signature)

(Name and title)

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THIS CONSENT DECREE (C.A. No. 89-562-LON) IS HEREBY
ENTERED AND MADE AN ORDER OF THIS COURT THIS _____ DAY OF
_____, 1991.

CHIEF JUDGE JOSEPH J. LONGOBARDI
UNITED STATES DISTRICT COURT JUDGE